

BEFORE THE  
OFFICE OF ADMINISTRATIVE HEARINGS  
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

SANTA ROSA CITY SCHOOLS.

OAH Case No. 2014100519

ORDER GRANTING STUDENT'S  
REQUEST FOR CONTINUANCE AND  
SETTING MEDIATION, PREHEARING  
CONFERENCE AND HEARING  
DATES; DENYING SANTA ROSA  
CITY SCHOOL'S REQUEST FOR A  
MEDIATOR; DENYING STUDENT'S  
REQUEST FOR A MEDIATOR AND  
OTHER REQUESTS CONCERNING  
MEDIATION; AND DENYING  
STUDENT'S REQUEST FOR A  
HEARING JUDGE NOT ASSOCIATED  
WITH THE OFFICE OF  
ADMINISTRATIVE HEARINGS

On October 15, 2014, the Office of Administrative Hearings scheduled this matter as follows: mediation was scheduled on November 13, a prehearing conference on November 24, and the hearing to begin on December 4, 2014. On November 3, 2014, Student filed an amended complaint in response to an October 22, 2014 order finding that some of the claims raised in the original complaint were not sufficiently pled. On November 10, 2014, OAH issued an order finding that the amended complaint was sufficiently pled. OAH served the order on Student by overnight delivery. On November 12, 2014, Santa Rosa City Schools filed a motion to dismiss issues based on the statute of limitations.

In response to the filing of the amended complaint, OAH issued a scheduling order on November 17, 2014, setting the following dates: mediation was scheduled on December 9 and the prehearing conference, on December 19, 2014, and the hearing to begin on January 6, 2015. The scheduling order was served on Student by mail and by fax.

On November 17, 2014, Student filed a request for a status conference or new dates, which appears to have been filed prior to Student receiving the November 17, 2014 scheduling order. Santa Rosa did not file a response to Student's request. On November 24, 2014, Santa Rosa filed a request for a named mediator who is a pro tempore administrative law judge.

On November 25, 2014, OAH issued an order dismissing one claim in its entirety, and limited the rest of the claims to those that occurred after October 10, 2012. OAH served this order on the parties on December 1, 2014.

On November 25, 2014, Student filed requests for the following: new dates or a status conference; an independent mediator not associated with OAH; a mediation on the record; a deposition with an independent mediator; a judge not associated with OAH; and the complaint to be amended to include additional parties as respondents. Santa Rosa did not file a response.

## APPLICABLE LAW AND DISCUSSION

### *Student's November 17, 2014 Request for New Dates or Status Conference*

A due process hearing must be conducted and a decision rendered within 45 days of receipt of the due process notice unless an extension is granted for good cause. (34 C.F.R. § 300.515(a) & (c) (2006); Ed. Code, §§ 56502, subd. (f), 56505, subd. (f)(3); Cal. Code Regs., tit. 1, § 1020.) As a result, continuances are disfavored. Good cause may include the unavailability of a party, counsel, or an essential witness due to death, illness or other excusable circumstances; substitution of an attorney when the substitution is required in the interests of justice; a party's excused inability to obtain essential testimony or other material evidence despite diligent efforts; or another significant, unanticipated change in the status of the case as a result of which the case is not ready for hearing. (See Cal. Rules of Court, rule 3.1332(c).) OAH considers all relevant facts and circumstances, including the proximity of the hearing date; previous continuances or delays; the length of continuance requested; the availability of other means to address the problem giving rise to the request; prejudice to a party or witness as a result of a continuance; the impact of granting a continuance on other pending hearings; whether trial counsel is engaged in another trial; whether the parties have stipulated to a continuance; whether the interests of justice are served by the continuance; and any other relevant fact or circumstance. (See Cal. Rules of Court, rule 3.1332(d).)

Student's November 17, 2014 request for new dates or a status conference was based on several arguments. First, Student argued she was unable to prepare a prehearing conference statement when she did not know the issues to be litigated. Second, Student contended that OAH should have issued new dates, presumably after the amended complaint was filed. Third, Student argued that Santa Rosa did not provide requested records that were necessary to prepare for hearing. Fourth, Student or her educational representative, or both, were recently diagnosed with pneumonia. (The information provided was unclear concerning who was ill.)

This request is denied as moot. On the same date that it was filed, November 17, 2014, OAH issued a scheduling order setting the mediation on December 9 and the prehearing conference on December 19, 2014, and the hearing to begin on January 6, 2015.

While there was some delay in issuing the scheduling order, these dates were properly set in response to Student's filing of the amended complaint.

#### *Student's November 25, 2014 Requests*

Ordinarily, OAH requires that a party submit each motion or request as an individual document. Student's November 25 filing identifies four separate requests: (1) a request for a continuance or status conference; (2) a request for a mediator not associated with OAH; (3) a request for a judge not associated with OAH; and (4) a request to amend the complaint to add additional parties. In addition, Student also requested a mediation that is on the record and a deposition with a mediator not associated with OAH.

OAH generally requires a party to submit evidence or a declaration under penalty of perjury in support of similar requests. However, for the sake of efficiency and judicial economy, the first three requests will be addressed. This order does not address Student's request to amend the complaint. If Student wishes to amend the complaint to add new parties, she must file a separate request to do so along with an amended complaint that includes the new parties.

#### REQUEST FOR A CONTINUANCE OR STATUS CONFERENCE

Student's request for a continuance is based on several factors. First, Student's representative stated she was been ill with pneumonia for several weeks and remained weak and very ill. Second, Student stated that the Department of Education required Santa Rosa to provide requested records by December 1. Student claimed that Santa Rosa agreed to provide records by December 2, but it did not have or will not provide all of the records. Third, Student argued that an individualized education program team meeting needed to be held before the prehearing conference to review recently conducted assessments. Fourth, Student contended that she needed time to file an appeal if OAH issued an order that was unfavorable.

Assuming that the facts Student presented are true, some of them establish good cause and provide a basis for a continuance. Santa Rosa's failure to timely provide records prevented Student from preparing for the mediation, prehearing conference and hearing. In addition, the serious illness of Student's representative will likely hinder her ability to review the documents once received. The other arguments Student made, such as needing to have time to conduct an IEP team meeting or appeal an unfavorable order, do not provide good cause for a continuance. Student's request for a continuance is granted.

#### STUDENT'S OPPOSITION TO SANTA ROSA'S REQUEST FOR MEDIATOR AND STUDENT'S REQUESTS CONCERNING MEDIATION

Student objected to Santa Rosa's request for a specific mediator. Student argued that Santa Rosa requests mediators who are impartial and possibly friendlier to students to preclude them from being assigned to conduct a hearing. Student requested that a specific

mediator who had previously worked with the parties be assigned to the case. In addition, Student requested a mediation that is held on the record as well as a deposition with an independent mediator.

Santa Rosa's and Student's requests for specific mediators are each denied. All of OAH's mediators are fully trained and equally competent to mediate any case. Mediators are assigned based on operational needs.

Student's request for a mediation on the record is denied. In order to facilitate frank discussion among the parties, which is necessary for a successful mediation, and to protect confidentiality, mediations are not conducted on the record.

Finally, Student's request for a deposition with a mediator not associated with OAH is denied. Student provided no legal support for her request. The law does not authorize OAH to conduct a deposition in a special education case.

#### STUDENT'S REQUEST FOR A JUDGE NOT ASSOCIATED WITH OAH

An ALJ may be disqualified for bias, prejudice, or interest in the proceeding. (Gov. Code, § 11425.40, subd. (a).) A factual showing of actual bias or prejudice is required to disqualify an ALJ for cause. (See *American Isuzu Motors, Inc. v. New Motor Vehicle Board* (1986) 186 Cal.App.3d 464, 472.) For example, in order to be a basis for disqualification, the financial interest of the ALJ in the outcome of the case must be direct, personal, and substantial, rather than slight. (*Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017, 1031.) However, in most cases, including claims of bias arising from the administrative law judge's personal or political views, disqualification will not occur absent a showing of actual bias. (*Id.* at p. 1032.)

In this case, Student did not aver that a specific ALJ needed to be disqualified for cause, but that all of OAH's ALJ's should be disqualified. Student argued that because she filed a complaint concerning her prior experiences with an OAH administrative law judge, none of the ALJ's can provide a fair hearing. Student did not show either actual or probable bias. Student's request is denied.

#### ORDER

1. Student's request for a continuance is granted. The matter is scheduled as follows:

Mediation:	April 7, 2014, at 9:30 a.m.
Prehearing Conference:	April 13, 2014, at 10:00 a.m.
Due Process Hearing:	April 21 and 22, 2014, beginning at 9:30 a.m., and continuing day to day, Monday through Thursday, as needed at the discretion of the ALJ.

2. District's request for a specific mediator is denied.
3. Student's requests for a specific mediator, a mediator not associated with OAH, a mediation that is on the record, and a deposition with an mediator not associated with OAH are each denied.
4. Student's request for a judge to be assigned who is not associated with OAH is denied.
5. All other relief requested is denied.

DATE: December 4, 2014

/s/

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JUDITH A. KOPEC  
Division Presiding Administrative Law Judge  
Office of Administrative Hearings